IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6449 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANILBHAI BHIKHUBHAI GHODIYA PATEL

Versus

DISTRICT MAGISTRATE, NAVSARI

Appearance:

MS BANNA S DUTTA for the Petitioner.

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his detention order dated 10.3.2004, by which he is detained as a 'bootlegger' under the provisions of

the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner is also served with the grounds of detention. In the aforesaid grounds, there is a reference about two criminal cases, which are pending against the petitioner. The aforesaid cases are registered against the petitioner under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor. After considering the said cases, the Authority has detained him under PASA. It is the aforesaid order which is impugned in this petition.

It is argued by the learned Advocate for the petitioner that the authority has not recorded statements of witnesses and the sole basis for detaining the petitioner is the two registered cases.

The learned Advocate for the petitioner vehemently contended that the last registered case is of 29th December, 2003 and the detention order is passed on 10th March, 2004. According to the learned Advocate for the petitioner, the unexplained delay in passing the detention order, vitiates the said order. She submitted that if the allegations were really of such a grievous nature, it was not necessary to wait for such a long time especially when, in between, no statements of witnesses are recorded. The point of delay is already taken in the petition. However, this point is not replied as no affidavit-in-reply is filed by the respondents. The ground taken in the petition has gone uncontroverted. Under these circumstances, by virtue of such delay, the subjective satisfaction can be said to have been vitiated. The order of detention, therefore, is required to be quashed and set aside.

The learned Advocate for the petitioner also submitted that these two registered criminal cases cannot be made the basis for detaining the petitioner under PASA, and that by itself cannot be said to be a material for the purpose of holding that the petitioner's activities had become a threat to the public order and public health. According to the learned Advocate for the petitioner, necessary material in this regard is totally wanting in the body of the detention order itself. She further submitted that, in large number of cases, the Supreme Court has considered that involvement in bootlegging activities, even if coupled with violence, does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction

with regard to breach of public order or public health. She further submitted that after giving particulars of criminal cases, the detaining authority, by including certain allegations, not supported by any credible material, has simply observed that the petitioner's activities were an obstacle to the public health and public order.

However, as the petitioner is required to be released on the basis of the first ground, the second ground is not required to be examined.

Considering the fact that there is unexplained delay in passing the detention order, the petition is required to be allowed on the said sole ground.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

(P.B. Majmudar, J.)

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(apj)